IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3916 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AGRICULUTRAL PRODUCE MARKET COMMITTEE

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioners

MS HARSH DEVANI FOR Respondent No. 1 & 2

MR JAYANT PATEL for Respondent No. 3

RULE SERVED for Respondent No. 4, 5

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 27/12/2000

C.A.V. JUDGEMENT

#. This petition, under Article 226 of the Constitution of India, has been filed against the order dated

20-5-1999 passed by the Director of Agricultural Marketing and Rural Finance, Gandhinagar, in proceedings registered as Appeal No. 10 of 1999, whereby on a grievance raised by respondent no. 3 (the defeated candidate), the election of 8 petitioners (Nos. 2 to 9) as members to the Managing Committee of the Agricultural Produce Market Committee, Savli, Vadodara has been set aside. The election to the Managing Committee of an Agricultural Produce Marketing Committee is regulated by the provisions contained in Chapter IV of the Gujarat Agricultural Markets Act, 1963 and the Gujarat Agricultural Produce Markets Rules, 1965 framed thereunder. (hereinafter referred to shortly as the Act and the Rules respectively).

#. For the purpose of deciding this writ petition, the only relevant provisions to be noticed are those contained in Section 11 of the Act. Under clause (i) of subsection (1) of Section 11, every Market Committee should consist of "8 agriculturists", who shall be elected by Members of the Managing Committee of Cooperative Societies (other than Cooperative Marketing societies), dispensing agricultural credit in the market area. The respondent, Director or Controller of Marketing and Rural Finance, by the impugned order dated 24-5-1999, has set aside the election of the 8 petitioners herein, mainly, on the ground that about 191 voters were included in the voters list as Members of 21 Milk Societies and such voters exercised their right to vote resulting in election of the 8 candidates being the petitioners 2 to 9 herein. It is stated that there is only a margin of 39 votes between the present petitioners and the candidate elected last. The illegal inclusion of 191 voters of 21 Milk Societies, therefore, materially affected the result of the election and the election was, therefore, liable to be set aside.

#. The election to the Managing Committee of Agricultural Produce Market Committee is regulated by the Rules of 1965 framed under Section 59 of the Act. Under Part III to Rules, by Rules 4 to 8, procedure is provided for preparation of voters list. Section 11(1)(i) with which the present petition is concerned reads as under:-

"11(1) Every market committee shall consist of the following members, namely :-

(i) eight agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing societies) dispensing agricultural credit in the

market area;

(ii) xx xx xx xx

(iii) xx xx xx xx

Rule 5 provides the procedure for preparation of list of voters referrable to Section 11(1)(i). Rule 5 in its relevant part reads:-

"5. Different lists of voters. - For the purposes of Section 11, there shall be in respect of a market committee three separate lists of voters in Gujarati as follows, namely:-

(1) under clause (i) of sub-section (1) of Section 11 of the Act, a list of members of managing committees of Co-operative Societies dispensing agricultural credit in the market area;

(2) xx xx xx

(3) xx xx xx"

#. With regard to the other procedure of holding election indicated in the Rule, we are not concerned excepting that Rule 28 which provides the forum for challenging validity of an election. Rule 28 is required to be reproduced in full, as the nature of power conferred and the scope of jurisdiction of the authority deciding the validity of election, is a matter of debate between the parties:-

"28. Determination of validity of election - (1) If the validity of any election of a member of the Market Committee is brought in question by any person qualified either to be elected or to vote at the election to which such question refers such person may, within seven days after the date of the declaration of the result of the election, apply in writing -

(a) to the Director, if the election has been conducted by a person authorised by the Director, to perform the function of an Election Officer and

(b) to the State Government if the election has been conducted by the Director as an Election Officer.

(2) On receipt of an application under sub-rule (1), the Director, or the State Government, as the case may be, shall, after giving an opportunity to the applicant to be heard and after making such inquiry as he or it, as the case may be, deems fit, pass an order confirming or amending the declared result of election or

setting the election aside and such order shall be final. If the Director or the State Government as the case may be sets aside the election, a date shall be forthwith fixed, and the necessary steps be taken for holding a fresh election for filling up the vacancy of such member."

#. Learned Sr. Counsel Shri B.S. Patel, appearing for the petitioners, has assailed the impugned action of setting aside the election of the petitioners, mainly on two grounds. Firstly, it is submitted that application by way an election petition in accordance with Rule 28 of the Rules was filed by election petitioner (respondent no.3 - Dhirubhai Ambalal Patel) within 7 days of the date of declaration of the result of the election, but, said application or petition was not validly presented, as the eight candidates (petitioners nos. 2 to 9 herein) were not made parties against whom relief of setting aside election was sought. The Authority, considering the election petition, permitted the elected candidates to be impleaded in the election petition much after the expiry of 7 days. The result of the election was declared on 5-1-1999. The application for setting aside was made on 12-1-1999 but, the application to implead elected candidates as parties was made on 10-3-1999. It is submitted that application or election petition filed under Rule 28 should, therefore, have been rejected outright on the ground of limitation.

#. The second ground urged on behalf of the petitioners is that 191 Milk Societies were cooperative societies dealing in marketing and sale of milk, but they were also dispensing market credit in the market area and, therefore, the inclusion of Members of the Managing Committee of such Societies in the voters list was not illegal. In this respect it has also been submitted that merely on the ground that there was a margin of 39 votes between the election petitioner and the candidate last elected, it could not necessarily be held in the absence of evidence that wrong inclusion of 191 voters as Members of 21 Milk Societies had materially affected the result of election. It is submitted that the expression that the result of election has been materially affected by wrong inclusion of certain number of voters in the voters list has a legal connotation well established in general election law and the burden on the election petitioner is heavy requiring him to lead evidence to prove as to in what matter the votes cast by such illegally included voters would have affected the ultimate result of the election. Reliance is placed on the earliest decision of

Supreme Court under Representation of Peoples Act in the case of Vashist Narain Sharma v. Dev Chandra and others AIR 1954 SC 513 followed in Paokai Haokip v. Rishang and others AIR 1969 SC 663.

#. Learned counsel appearing for the respondent no.3 (the election petitioner) firstly made strenuous effort before me to contend that the Authority constituted to investigate into complaints in the matter of election has power to condone delay in preferring the Application under Section 5 of the Limitation Act, the provisions of which are said to be applicable by virtue of 29(2) of the said Act.

#. On behalf of the respondent no.3, it is submitted that the Authority who entertained the petition against the election after hearing the parties likely to be affected i.e., the elected candidates came to the conclusion that 21 Milk Societies did not answer the description of being `Societies other than cooperative marketing societies engaged in dispensing agricultural credit in the market area'. Reliance is placed on the decision of learned Single Judge of this Court in Gunvantrai Manibhai Desai v. B. Narsinhmn and others XXV(1) 1984(1) GLR 603 in which it has been held that if a milk producing society is engaged in dispensing agricultural credit in the market area, but is also simultaneously engaged in the business of buying and selling of agricultural produce, it would be a marketing-cum-credit society, and therefore, such societies which are also cooperative marketing societies, are excluded from sending its representatives to the Market Committee in view of the language employed in clause (i) of subsection (1) of Section 11.

#. After hearing the learned counsel for the petitioner and the grounds urged by them for their respective parties, in my considered opinion, the first question that this Court is required to address is to ascertain the nature of proceedings before the forum created by Rule 28 for investigation into the grievances and complaint with regard to election to Market Committee under the Act. The language employed in Rule 28 would go to show that it permits a qualified voter to apply in writing to the designated Authority to challenge the validity of an election. Prima facie, it does not appear to be a kind of an election petition to be tried like an election petitions under other laws regulating election to local bodies such as the Municipalities, Corporations, and Cooperative Societies. Sub-Rule (2) of Rule 28 lays

down the procedure for deciding such a grievance or application against an election. The Rule specifically requires giving due opportunity of hearing to the applicant and then holding of an enquiry. In the procedure indicated in the Rule, there is no requirement of making elected candidates as parties to the petition. It is reasonable to hold that since parties elected are likely to be directly affected by the decision of the designated Authority, grant of opportunity of hearing to them is a necessary requirement of the procedure in consonance with principles of natural justice. Such requirement which has to be necessarily read into the procedural provision under sub-rule (2) of Rule 28 does not, however, allow rejection of application on the bar of limitation. In the instant case, the grievance by way of an application or a petition was made well within seven days prescribed in Sub-Rule (1) of Rule 28. Hearing to be given to the affected parties is part of the procedural provision in sub-rule (2) when the designated Authority, on an application against election, proceeds to hear the applicant and makes an enquiry into the complaint or grievance. It is at the stage of "making an enquiry" as required by sub-rule (2) of Rule 28 that the necessity of hearing the parties likely to be affected by the decision of the designated Authority arises. Merely, therefore, on the ground that initially at the time of filing of the application against the election, the election petitioner had not impleaded the elected candidates as parties cannot be a good ground to reject his application/petition as barred by limitation. In view of the above interpretation of the provisions of Rules, I do not consider it necessary to go into the larger question whether the provisions of Section 3 of the Limitation Act could be availed by the election petitioner to seek condonation of delay under Section 5 of the Limitation Act.

##. The `Designated Authority' prescribed in Rule 28 has made an enquiry to come to the conclusion that as many as 129 Members of the Managing Committee of 21 Milk Societies were included in the voters list without any material or proof before the election authority that those Milk Societies were engaged in `dispensing agricultural credit' in the market area. The finding so reached on material and evidence produced before the Designated Authority in the course of his enquiry being purely and essentially a question of fact, I refrain from going into the correctness of the same. I shall, however, consider the alternative legal contention advanced on behalf of the petitioner by the learned counsel that 21 Milk Societies, which in accordance with

their bye-laws were engaged or could engage themselves in dispensing agricultural credit in the market area, were fully qualified to seek election through its Members to the Managing Committee in accordance with clause (i) of subsection (1) of Section 11. Clause (i) of subsection (1) of Section 11 has been interpreted by learned Single Judge of this Court in the case of Gunvantrai Manibhai Desai (supra). The requirement of clause (i) of subsection (1) of Section 11 is that the agriculturists who can be elected to the Market Committee should be `members of the Managing Committee of the Cooperative Societies (other than cooperating marketing societies) dispensing agricultural credit in the market area'. Whether the words and expression `dispensing agricultural credit in the market area' denotes present perfect situation, as is sought to be contended on behalf of respondent no.3 or it denotes merely the nature of the activities of such cooperative societies engaged or generally engaged in market credit, is a matter which I need not decide for the purpose of this case. Before the Designated Authority the facts and material produced showed that the Election Authority while including the names of 191 members from 21 Milk Societies did not at all undertake any enquiry as to whether the said Milk Societies are actually engaged in dispensing agricultural credit in the market area or not and whether their bye-laws permit any such business to them. The inclusion of their names as voters without such an enquiry had vitiated the election. No enquiry was also made by the Authority which was authorised to prepare the voters list as to whether such 21 Milk Societies were also cooperative marketing societies or not. It was necessary because, as held by the learned Single Judge in the case of Gunvantrai Manibhai Desai (supra), if such Milk Societies engaged in dispensing of agricultural credit are also cooperative marketing societies, they are excluded from clause (i) of subsection (1) of Section 11 to send eight agriculturists for election to the Market Committee. Clause (i) of subsection (1) of Section 11 provided that eight agriculturists can seek election from Members of the Managing Committees of such cooperative societies which are dispensing agricultural credit and they are not cooperative marketing societies. The enquiry and investigation as required by clause (i) of Subsection (1) of Section 11, before inclusion of the names of 191 voters of 21 Milk Societies, was not undertaken by the Election Authority before holding the polls. The above finding reached by the Designated Authority who entertained a complaint on election under Rule 28 is, therefore, unassailable before me in this proceeding under Article 226 of the Constitution of

India.

##. Now, the last ground urged on behalf of the petitioner remains to be considered. As has been stated by me above Rule 28 of the Rules and the procedure indicated therein do not show that the grievance raised against an election before the Designated Authority is to be tried strictly like an election petition, as to be found in other election laws of the local bodies. The forum provided in Rule 28 appears to be in the nature of a Supervisory Authority constituted to examine grievances or complaints concerning the elections as it is the duty of the higher authorities to ensure that the election is held strictly in accordance with law. The strict standard of proof as required in election provisions under Representation of Peoples Act, therefore, cannot be made applicable to a grievance or complaint made by a qualified voter against election to a Market Committee under Rule 28 of the Rules. In the Rules there are no grounds specified on which validity of the election to Market Committee can be challenged, as is to be found in other election laws. The strict standard of proof with regard to material effect on the result of election by the alleged violation of any election law cannot be insisted upon in a grievance or complaint for not holding of a fair and free election under Rule 28. In this case margin of votes was found to be only 39 and as many as 191 voters were found to have been illegally included in the voters list. The Designated Authority was, therefore, right in coming to the conclusion that the result of the election was materially affected by illegal inclusion of 191 voters in the voters list. The strict standard of proof of alleged material effect on election, as to be found in the provisions of Representation of Peoples Act, therefore, cannot be urged as a ground to find a fault with the decision of the Designated Authority.

##. For all the above reasons, I find no merit in this petition which is accordingly dismissed. Rule is discharged.

In the circumstances, there shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

[sndevu]

After pronouncement of the judgment, learned

counsel for the petitioners state that interim stay granted during the pendency of the Petition may be extended for four weeks to enable the petitioner to approach the L.P.A. Bench. Interim relief order shall continue for a period of four weeks from today or till further orders from the L.P.A. Bench, whichever is earlier.

(D.M. DHARMADHIKARI, C.J.)

[sndevu]